

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

GEORGE DUNBAR PREWITT, JR.,
Plaintiff

V.

NO. 4:94CV94-B-O

LUTHER ALEXANDER, JAMIE MCGOWIN,
ALFRED RANKINS, LON PEPPER, ELSIE
ABRAHAM, in their official capacities
as the Washington County Board of
Supervisors, WASHINGTON COUNTY,
MISSISSIPPI, GEORGE T. KELLY, JR.,
EUGENE BOGEN, JEROME HAFTER, ANDREW
ALEXANDER, and MISSISSIPPI POWER &
LIGHT COMPANY,

Defendants

MEMORANDUM OPINION

This cause comes before the court upon the motion of the defendant Eugene Bogen to dismiss, or in the alternative, for summary judgment. Upon due consideration, the court finds that the defendant's motion is well-taken and should be granted.

FACTS

Eugene Bogen is one of three circuit court judges for the Mississippi Fourth Circuit Court District, which includes Washington County. Bogen has served as a circuit court judge since January 1, 1987. Miss. Code Ann. § 99-15-15 grants circuit court judges the authority and responsibility, in their discretion, to appoint counsel to defend indigents charged with a felony or misdemeanor punishable by confinement for ninety days or more. Miss. Code Ann. § 25-32-13 grants circuit court judges the authority and responsibility to appoint separate counsel to defend indigents who have conflicts of interest with the public defender,

or who have other good cause, and also to appoint additional counsel to assist the public defender when necessary.

After plaintiff's dismissal from the Washington County Public Defender's Office, Bogen refused to allow plaintiff's name to be placed on the list of attorneys eligible to represent indigent defendants. The plaintiff alleges in his complaint that Bogen's refusal to allow him to be appointed to represent indigent defendants unlawfully prevents him from pursuing his profession. The plaintiff further asserts that Bogen's actions are directly related to an alleged conspiracy to force the plaintiff and other minorities out of Greenville's ward three, so as to preserve white control of city government.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Rule 56(e). All legitimate factual inferences must be made in favor of the non-

movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

As a Circuit Court Judge, Bogen is entitled to absolute judicial immunity. As with other forms of official immunity, judicial immunity is an immunity from suit, not just from the ultimate assessment of damages. Mireles v. Waco, 502 U.S. 9, 11, 116 L. Ed. 2d 9, 14 (1991). Judicial immunity is not overcome by allegations of bad faith or malice. Id. at 502 U.S. at 11, 116 L. Ed. 2d at 14; See also Pierson v. Ray, 386 U.S. 547, 554, 18 L. Ed. 2d 288, 294 (1967) ("immunity applies even when the judge is accused of acting maliciously and corruptly"). There are only two sets of circumstances in which judicial immunity can be overcome. First, a judge is not immune from liability for actions that are not taken in the judge's judicial capacity. Second, a judge is not immune from suit for actions which, although judicial in nature, are taken in the complete absence of all jurisdiction. Mireles, 502 U.S. at 11-12, 116 L. Ed. 2d at 14.

In this action, Bogen's decision not to appoint the plaintiff to represent indigent defendants is clearly protected by the doctrine of judicial immunity. Neither of the exceptions apply.

Furthermore, the defendant has articulated a legitimate reason for his actions, and has sworn under oath that neither race nor a desire to force the plaintiff to move from ward three played a part in his decision. The plaintiff has offered absolutely no evidence to refute the defendant's affidavit.

CONCLUSION

For the foregoing reasons, the court finds that the defendant's motion for summary judgment should be GRANTED, and the plaintiff's claims against Eugene Bogen be DISMISSED with prejudice.

An order will issue accordingly.

THIS, the _____ day of July, 1995.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE